

**Reportable**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NOS.10643-10644 OF 2010**

Indian Performing Rights Society Ltd. ... Appellant

Vs.

Sanjay Dalia & Anr. ... Respondents

(With C.A. No.4912/2015 @ SLP [C] No.8253/2013)

**JUDGMENT**

**ARUN MISHRA, J.**

1. Leave granted in SLP[C] No.8253 of 2013.
2. In the appeals, the question arising for consideration is as to the interpretation of section 62 of the Copyright Act, 1957 and section 134(2) of the Trade Marks Act, 1999 with regard to the place where a suit can be instituted by the plaintiff.
3. The plaintiff/appellant in Civil Appeal Nos. 10643-44/2010 had filed a suit praying for relief against defendant No.1 so as to prevent infringement of the rights of the plaintiff without obtaining the

licence. The defendant owns cinema halls in Maharashtra and Mumbai where infringement is alleged and the entire cause of action, as alleged in the plaint, has arisen in Mumbai, Maharashtra.

4. Civil Suit FAO (OS) No. 359/2007 has been filed in the High Court at Delhi, by virtue of the fact that the Branch Office of the plaintiff is situated at Delhi and the plaintiff is carrying on the business at Delhi. However, it is not disputed that the plaintiff's Head Office is situated at Mumbai. The objection was raised by the defendant with regard to the territorial jurisdiction of the court at Delhi. The single Bench and the Division Bench of the High Court have upheld the objection and held that the suit should have been filed in the facts of the case, in the court at Mumbai. Hence, the impugned order has been questioned in the appeals.

5. In Civil Appeal arising out of SLP [C] No. 8253/2013 – (*Advance Magazine Publishers Inc. & Anr. v. Just Lifestyle Pvt. Ltd.*), the suit has been filed with respect to the infringement of the trademark. The registered office of “Vogue India” is in Mumbai. The magazine is processed and published in Mumbai. It was submitted that because the plaintiff has branch office at Delhi, it had sufficient ground for invoking the jurisdiction under section 134 of the Trade Marks Act. The plaintiff filed an application seeking an amendment in

the plaint under Order 6 Rule 17 of the Code of Civil Procedure so as to indicate how the court at Delhi would have the jurisdiction. The magazine is sold and circulated to the subscribers at Delhi. The application seeking amendment has also been dismissed by the High Court as even if allowed, amended pleadings would not confer jurisdiction upon the court. Merely situation of branch office is not enough as no cause of action as per the plaint, has arisen in Delhi. The Division Bench has allowed the appeal and set aside the order passed by the Single Bench, allowing the amendment. The said order has been impugned in SLP [C] No.8253/2013.

6. It was submitted by Shri T.R. Andhjarujina, learned senior counsel representing the appellants, that a special right has been conferred under section 62(2) of the Copyright Act and section 134 of the Trade Marks Act containing non-obstante clause to the applicability of the Code of Civil Procedure or any other law for the time being in force, and the plaintiff has been conferred a right to file a suit where it carries on its business. That cannot be whittled down by combining with it the cause of action. The impediment of section 20 of the Code of Civil Procedure is not applicable. Section 62(2) of the Copyright Act and section 134 of the Trade Marks Act have no co-relation to the cause of action and suit can be filed where plaintiff

resides or carries on his business or personally works for gain. The interpretation made by the High Court is contrary to the aforesaid provisions. Convenience of the defendant is not a relevant consideration. The binding decision of this Court in *Exphar SA & Anr. v. Eupharma Laboratories Ltd. & Anr* [2004 (3) SCC 688] has been violated. The judgment has not been taken into consideration though it was decided earlier to the passing of the impugned decision. Reliance has also been placed on the decisions of this Court in *Dhodha House v. S.K. Maingi* [2006 (9) SCC 41], *Dabur India Ltd. v. K.R. Industries* [2008 (10) SCC 595] and various other decisions of the High Court of Delhi viz., *Smithkline Beecham & Anr. v. Sunil Singhi & Anr.* [2000 (1) PTC 321 (Del.)], *Caterpillar Inc. v. Kailash Nichani & Ors.* [2002 (24) PTC 405 (Del.)], *Intas Pharmaceuticals Ltd. v. Allergan Inc.* [132 (2006) Delhi Law Times 641] to contend that under the aforesaid provisions accrual of cause of action wholly or in part is not necessary at a place where the plaintiff chooses to file a suit where he is carrying on business.

7. On behalf of the applicants in C.A. Nos. 10643-44/2010, Mr. Sudhir Chandra, learned senior counsel, submitted that while interpreting section 62 of the Copyright Act and section 134(2) of the Trademarks Act, the intention of Parliament is to be gathered from

plain and natural meaning. *Heydon's* 'rule of mischief' is not attracted where the words of the statute are clear and unambiguous. There is no challenge to the vires of section 62 of the Copyright Act. Thus, the court cannot invoke the doctrine of reading down the provisions. Section 62 of the Copyright Act is a special legislation and confers a special right on the plaintiff where it carries on business or resides. Reading the Explanation to section 20 of the Code of Civil Procedure into section 62 will do violence to the Copyright Act. The requirement of cause of action or Explanation as to the corporation of Section 20 C.P.C. cannot be added to the aforesaid provisions. Facts of few cases cannot be considered so as to make interpretation of provisions. Interpretation of the statute is to be made *de hors* the facts of individual cases. The intention of legislation is also clear from the Parliamentary Debates and where the law has held the field for a long time it should not be unsettled. The decision in *Dhodha House* (supra) holds the field. As such, if a different interpretation is to be made, the case should be referred to a larger Bench of this Court. Non-obstante clause cannot be diluted.

8. On the other hand, on behalf of the respondents, it was submitted that abuse of provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be permitted at the

hands of multi-national corporations to harass the defendant/s. With respect to the suit being filed by the Corporation, section 20 is not inapplicable. 'Carrying on business' cannot be defined subjectively. Reliance has been placed upon *Patel Roadways Ltd., Bombay v. Prasad Trading Co.* [1991 (4) SCC 270]. The object of the Parliament behind enacting section 62 of the Copyright Act and section 134 of the Trade Marks Act has to be taken into consideration while interpreting the said provisions. The mischief rule of *Heydon* has been pressed into service so as to prevent harassment of the defendants and abuse of the said provisions. Court is duty-bound to avoid disproportionate counter mischief while interpreting a provision. Public policy and convenience to parties have to be taken into consideration. The interpretation of provisions must be such so as to avoid hardship and absurdity. The decisions relied upon by the appellants have been sought to be distinguished.

9. The Code of Civil Procedure, 1908 contains the provisions under section 20 with respect to institution of the suits where defendant resides or cause of action arose. Section 20 of the Code of Civil Procedure reads thus :

**“Section 20 - Other suits to be instituted where defendants reside or cause of action arises. --** Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction --

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

[Explanation]. : A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

10. In order to amend and consolidate the law relating to copyrights, the matter was referred to a Joint Committee. The Joint Committee of the Houses submitted the report which contained the object of the provisions of section 62 is that many authors are deterred from instituting infringement proceedings because the court in which the proceedings are to be instituted are at a considerable distance from the place of their ordinary residence. Such impediments should be removed and the proceedings may be instituted in the local court where the person instituting the proceedings ordinarily resides, carries on business etc. Clause 61 of the Report of the said Committee is extracted below :

“Clause 61 (Original clause 65). --Sub-clause (2) of the original clause 65 has been omitted and replaced by a new sub-clause. The Committee feels that the provisions of the original sub-clause (2) would virtually make registration of copyright compulsory and would be an undue restriction on the owner of the copyright to exercise his rights. In the opinion of the Committee many authors are deterred from instituting infringement proceedings because the court in which such proceedings are to be instituted is situated at a considerable distance from the place of their ordinary residence. The Committee feels that this impediment should be removed and the new sub-clause (2) accordingly provides that infringement proceedings may be instituted in the district court within the local limits of whose jurisdiction the person instituting the proceedings ordinarily resides, carries on business, etc.”

(emphasis supplied by us)

Section 62 of the Copyright Act is extracted below :

**“62. Jurisdiction of court over matters arising under this Chapter. --**

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”



Section 134 of the Trade Marks Act is also extracted below :

**“134. Suit for infringement, etc., to be instituted before District Court. -- (1) No suit--**

- (a) for the infringement of a registered trade mark; or
- (b) relating to any right in a registered trade mark; or
- (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

*Explanation.--*For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user.”

11. Following portion of the Parliamentary Debates as to Copyright Act has been relied upon :

“Shri P. Trikamdass: Ordinarily it should fall within the jurisdiction of the court where the infringing copy was published. But there is nothing to prevent Parliament from making a law, as for instance in the case of divorce, and saying that the cause of action may also arise at any place where the author resides or where the original publication took place, so that you could drag the infringer to that court.

Instead of making the another run all over the country facing the infringer, the right may be given to the injured party-the author-to sue the main in the place where the author resides or where the first copy was published.

Dr. Raghbir Sinh: So you agree to that?

Shri P. Trikamdass: Yes, and I am obliged to you for asking me that question.

Dr. Raghbir Sinh: Does Mr. Masani also approve of it?

Shri Masani : Yes.

Shri P. Trikamdass: It is desirable, also because it may act as a deterrent on the infringer when he knows that he may have to go a few hundred miles off to a High Court where the author lives or where the book got published first.”

12. Considering the very language of section 62 of the Copyright Act and section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression “notwithstanding anything contained in the Code of Civil Procedure” does not oust the applicability of the provisions of section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to

the plaintiff so as to file a suit where he is residing or carrying on business etc., as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 C.P.C. has been added to the effect that Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, 'corporation' can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

13. Learned author Mulla in the Code of Civil Procedure, 18<sup>th</sup> Edn., has observed that under clauses (a) to (c) of section 20, plaintiff has a choice of forum to institute a suit. The intendment of the Explanation to section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there because it did not carry on business at that place. The linking of the place with the cause of

action in the Explanation where subordinate office of the corporation is situated is reflective of the intention of the Legislature and such a place has to be the place of the filing of the suit and not the principal place of business. Ordinarily the suit has to be filed at the place where there is principal place of business of the corporation.

14. 'Corporation' in the Explanation would mean not only the statutory corporation but companies registered under the Companies Act, as held by this Court in *Patel Roadways Ltd., Bombay v. Prasad Trading Co. etc.* [1991 (4) SCC 270] and *New Moga Transport Co., through its Proprietor v. United India Insurance Co. Ltd. & Ors.* [2004 (4) SCC 677]. The domicile of the company is fixed by the situation of its principal place of business as held in *Jones v. Scottish Accident Insurance Co.* (1886) 17 QBD 421. In the case of companies registered under the Companies Act, the controlling power is, as a fact, generally exercised at the registered office, and that office is therefore not only for the purposes of the Act, but for other purposes, the principal place of business, as held in *Watkins v. Scottish Imperial Insurance Co.* (1889) 23 QBD 285. A company may have subordinate or branch offices in fifty different jurisdictions and it may be sued in any one of such jurisdictions in respect of a cause of action arising there, has been held in *Peoples' Insurance Co. v. Benoy Bhushan* [AIR 1943 Cal. 190]; *Home Insurance Co. v. Jagatjit Sugar Mills Co.* [AIR 1952

Punj. 142]; and *Prag Oil Mills Depot v. Transport Corpn. of India* [AIR 1978 Ori. 167].

15. Accrual of cause of action is a *sine qua non* for a suit to be filed. Cause of action is a bundle of facts which is required to be proved to grant relief to the plaintiff. Cause of action not only refers to the infringement but also the material facts on which right is founded. Section 20 of the CPC recognises the territorial jurisdiction of the courts inter alia where the cause of action wholly or in part arises. It has to be decided in each case whether cause of action wholly or in part arises at a particular place. As held by this Court in *Rajasthan High Court Advocates Association v. Union of India & Ors.* [AIR 2001 SC 416]. Thus, a plaintiff can also file a suit where the cause of action wholly or in part arises.

16. On a due and anxious consideration of the provisions contained in section 20 of the CPC, section 62 of the Copyright Act and section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain *de hors* the fact that the cause of action has not arisen at a place where he/they are residing or any one of

them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

17. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings “because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence”. The impediment created to the plaintiff by section 20 C.P.C. of going to a place where it was not having ordinary residence or principal place of business was sought to

be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intentment of the provisions so enacted.

18. In our opinion, in a case where cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

19. At the same time, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent the impediment imposed under section 20 of the CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where plaintiff is having branch offices etc.

20. There is no doubt about it that the words used in section 62 of the Copyright Act and section 134 of the Trade Marks Act, 'notwithstanding anything contained in CPC or any other law for the time being in force', emphasise that the requirement of section 20 of the CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner



that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.

21. The provisions of section 62(2) of the Copyright Act and section 134 of the Trade Marks Act are *pari materia*. Section 134(2) of the Trade Marks Act is applicable to clauses (a) and (b) of section 134(1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to section 134(1)(c) in respect of “passing off” continues to be governed by section 20 of CPC.

22. If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far flung places than that of residence or where he carries on business or works for gain in order to deprive defendant a remedy and harass him by dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in *Heydon’s* case [76 ER 637]. According to the mischief rule, four points are required to be

taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. The *Heydon's* mischief rule has been referred to in *Interpretation of Statutes by Justice G.P. Singh*, 12<sup>th</sup> Edn., at pp. 124-125 thus :

**“(b) Rule in Heydon’s case; purposive construction: mischief rule**

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words “of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)” is the rule laid down in *Heydon's* case (76 ER 637) which has “now attained the status of a classic [*Kanailal Sur v. Paramnidhi Sadhukhan AIR 1957 SC 907*]. The rule which is also known as ‘purposive construction’ or ‘mischief rule’ [*Anderton v. Ryan 1985 2 ALL ER 355*], enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which “shall suppress the mischief and advance the remedy”. The rule was explained in the *Bengal Immunity Co. v. State of Bihar* [AIR 1955 SC 661] by S.R. DAS, CJI as follows: “It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's* case (supra) was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1<sup>st</sup> - What was the common law before the making of the Act?

2<sup>nd</sup> - What was the mischief and defect for which the common law did not provide?

3<sup>rd</sup> - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4<sup>th</sup> - The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*. [*Bengal Immunity Co. v. State of Bihar* (supra)].”

23. Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the plaintiff to sue at a place where he ordinarily resides or carries on

business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally worked for gain already at such place, where cause of action has arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation of the provisions was limited and their objective was clearly to enable the plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places. The Legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its Head Office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff/corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates etc. might be having several

subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far flung place and at unconnected place as compared to a place where plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.

24. The avoidance of counter mischief to the defendant is also necessary while giving the remedy to the plaintiff under the provisions in question. It was never visualised by the law makers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade marks holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The

Parliamentary Debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. Discussion was to provide remedy to plaintiff at convenient place; he is not to travel away. Debate was not to enable plaintiff to take defendant to farther place, leaving behind his place of residence/business etc. The right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions to be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction. In the instant cases, as the principal place of business is at Mumbai the cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. There may be a case where plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. Plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by appellants is acceptable, mischief may be caused by such plaintiff to drag a defendant to Port Blair or Kanyakumari. The provisions cannot be interpreted in the said manner devoid of the object of the Act.

25. It was also submitted that *Heydon's* rule is not applicable where the words of the statute are clear. Reliance has been placed on

*M/s. Hiralal Rattanlal etc. etc. v. State of U.P. and Anr. etc.* [1973 (1) SCC 216] in which it has been observed that when the provision is unambiguous and if from the provision legislative intent is clear, the court need not call into aid the other rule of construction of statutes such as that of 'mischief'. However, we opine, when two interpretations are possible, the court has to adopt the one which furthers the object as provided in the statute itself.

26. Reliance has been placed on *Padmasundara Rao (Dead) & Ors.v. State of Tamil Nadu and Ors.* [AIR 2002 SC 1334] in which it has been observed that the intention of the Legislature must be found in the words used by the Legislature itself. Reliance has also been placed on *Grasim Industries Ltd. v. Collector of Customs, Bombay* [2002 (4) SCC 297] in which it has been observed that wherever the language is clear, the intention of the Legislature is to be gathered from the language used. While doing so, what has been said as also what has not been said, has to be noted. There is no dispute with the aforesaid proposition. However, the object of the Act and the intention of the Legislature is clear which is to the otherwise.

27. *Bennion* on Statutory Interpretation in section 318 in Part XXI has mentioned that strict construction may be avoided or at least reduced by limiting the remedy where a counter mischief would arise

if the remedy provided by the Act was eschewed widely. It may appear to the court that one of the opposing construction of the enactment, if adopted, would operate a mischief of its own. The prospects of this would constitute a negative factor in weighing the applicability of the construction in question. The court also has in mind the consequences for the public welfare. *Bennion* has discussed thus :

“General presumption against ‘absurdity’ For the general presumption that an ‘absurd’ result is not intended, of which the present section depicts one aspect, see Code s.312.

Mischief As to the ‘mischief’ to which an enactment is directed see Code s.289.

Counter-mischief Clearly it would be absurd to suppose that Parliament intended to abolish one mischief only at the cost of establishing another which is just as bad, or even worse. Many legal rules have adverse side-effects, and the policy of the law is to discard possible rules whose disadvantages outweigh their benefits.

Example 318.1 Lord Bingham of Cornhill said:

‘My Lords, s.4 of the Statute of Frauds was enacted in 1677 to address a mischief facilitated, it seems, by the procedural deficiencies of the day.... It quickly became evident that if the seventeenth century solution addressed one mischief it was capable of giving rise to another....’

Regulatory Acts Some types of remedy necessarily carry in their train corresponding drawbacks. One of the most frequent and inescapable of these is the loss of freedom that accompanies a regulatory measure. Such consequences are manifest, and must be treated as part of Parliament’s intention.



Strict construction Where a counter-mischief would arise if the remedy provided by the Act were construed widely, the court may avoid or at least reduce it by limiting the remedy.

Example 318.2 Section 1 of the Domestic Violence and Matrimonial Proceedings Act 1976 (repealed) empowered the county court to make orders excluding a violent husband from the matrimonial home. No limit was specified for the duration of such exclusion orders. The courts held that, to reduce the counter-mischief of keeping a man out of his own home, exclusion orders should be made only for a brief period. In one case Viscount Dilhorne inferred that the purpose of the 1976 Act was 'immediate relief not permanent resolution'. In another case Ormrod LJ said the 1976 Act was to be regarded as 'a short-term remedy essentially'.

It may appear to the court that one of the opposing constructions of the enactment, if adopted, would create a mischief of its own. It is not unusual for a construction contended for by one of the parties to have as one of its consequences the infliction of a serious injustice on the other party. The prospect of this would constitute a negative factor in weighing the applicability of the construction in question. The court also has in mind the consequences for the public welfare.

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Often it is reasonable to assume that the counter-mischief that has arisen was quite unforeseen by Parliament. Enacted law suffers by comparison with unwritten law in that it involves Laying down in advance an untried remedy.....”

As observed, such a counter mischief to the defendant was unforeseen by Parliament and it is the court's duty to mitigate the counter mischief.

28. Strong reliance has been placed by the appellants on the discussions made by *Bennion* on avoiding disproportionate counter-mischief at page 1006 thus :

“the Court seeks to avoid a construction that cures the mischief the enactment was designed to remedy only at the cost of setting up a disproportionate counter-mischief since this is unlikely to have been intended by Parliament. Sometimes there are overriding reasons for applying such a construction, for example, where the Parliament really intended it or a literal meaning is too strong.”

We find no overriding reasons to apply construction solicited by the appellants as that was never intended by the Parliament.

29. *Bennion* has also observed that public policy must inform the court's interpretation of the relevant statutory provision and that public policy ascertained from the Act of the Parliament. In our opinion, right to approach the court/pursuing the legal remedy cannot be made a farce or oppressive as that would not be conducive for the effective administration of justice.

30. Justice G.P. Singh in '*Principles of Statutory Interpretation*', 12<sup>th</sup> Edition, has observed that regard be had to the subject and object of the Act. The court's effort is to harmonise the words of the statute with the subject of enactment and the object the Legislature has in view. When two interpretations are feasible, the court will prefer the one which advances the remedy and suppresses the mischief as envisioned. The relevant portion is extracted below :

"As stated earlier (Chapter 1, title 2 'Intention of the Legislature', text and notes 57 to 69, pages 14 to 17) and as approved by the Supreme Court: "The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained". [*Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*, AIR 1958 SC 353, p.356 ...] The courts have declined "to be bound by the letter, when it frustrates the patent purposes of the statute". [*Cabell v. Markham*, 148 F 2d 737 92<sup>nd</sup> cir 1945), (Judge Learned Hand). In the words of SHAH, J.: "It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature". [*New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*, AIR 1963 SC 1207, p. 1213 ...]. Therefore when two interpretations are feasible the court will prefer that which advances the remedy and suppresses the mischief as the Legislature envisioned. [*Carew & Company v. Union of India*, AIR 1975 SC 2260, p. 2270...]. The Court should adopt an object oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as

interpretative possibility permits. (*Busching Schmitz Private Ltd. v. P.T. Menghani*, AIR 1977 SC 1569, pp. 1575, 1576...]. The object oriented approach, however, cannot be carried to the extent of doing violence to the plain language used by rewriting the section or substituting words in place of the actual words used by the Legislature. [*CIT v. Budhraj and Company*, AIR 1993 SC 2529, p. 2535].

Having regard to the object of the U.P. Bhoodan Yagna Act, 1953 to implement the *Bhoodan* movement, which aimed at distribution of land to landless labourers who were versed in agriculture and who had no other means of subsistence, it was held that the expression 'landless persons' in section 14, which made provision for grant of land to landless persons, was limited to landless labourers as described above and did not include a landless businessman residing in a city. [*U.P. Bhoodan Yagna Samiti v. Braj Kishore*, AIR 1988 SC 2239].”

31. In *Busching Schmitz Private Ltd. v. P.T. Menghani* [1977 (2) SCC 835], it has been observed that purposive interpretation may be made having regard to the object of the provisions and to avoid any obvious lacuna.

32. The learned author *Justice G.P. Singh* in *Interpretation of Statutes, 12<sup>th</sup> Edn.* has also observed that it is the court's duty to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations. The doctrine must be applied with great care and in case absurd inconvenience is to be caused that interpretation has to be avoided. Cases of individual hardship or injustice have no bearing for enacting the natural construction. The

relevant discussion at pages 132-133 and 140-142 is extracted hereunder :

**“(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided**

In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" [*Holmes v. Bradfield Rural District Council*, (1949) 1 All ER 381, p. 384] as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". [*Simms v. Registrar of Probates*, (1900) AC 323, p. 335 CPC] If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. [*Grey v. Pearson*, (1857) 6 HLC 61, p. 106]. Similarly, a construction giving rise to anomalies should be avoided. [*Veluswami Thevar v. G.Raja Nainar*, AIR 1959 SC 422, pp. 427, 428]. As approved by VENKATARAMA AIYAR, J., "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." [*Tirath Singh v. Bachittar Singh*, AIR 1955 SC 830].”

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“Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution". [*Vacher & Sons v. London Society of Compositors*, (1913) AC 107]. Explaining why great caution is necessary LORD MOULTON further observed: "There is a danger that it may degenerate into a mere judicial criticism of the propriety of the Acts of Legislature. We have to interpret statutes according to the language used therein, and

though occasionally the respective consequences of two rival interpretations may guide us in our choice in between them, it can only be where, taking the Act as a whole and viewing it in connection with existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words cannot have been used in the sense to which the argument points". [*Vacher & Sons v. London Society of Compositors*, (1913) AC 107]. According to BRETT, L.J., the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an "absurd inconvenience". Moreover, individual cases of hardship or injustice have no bearing for rejecting the natural construction, [*Young & Co. v. Leamington Spa Corporation*, (1993) 8 AC 517], and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from. It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases. [*Lucy v. Henleys Telegraph Works*, (1969) 3 All ER 456]. "It is the duty of all courts of justice", said LORD CAMPBELL, "to take care for the general good of the community, that hard cases do not make bad law". [*East India Company v. Odichurn Paul*, 7 Moo PC 85]. 'Absurdity' according to WILLES, J., should be understood "in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance". [*Christopherson v. Lotinga*, (1864) 33 LJ CP 121]. "Absurdity", said LORD GREENE, M.R., "like public policy, is a very unruly horse". [*Grundt v. Great Boulder Proprietary Gold Mines Ltd.*, (1948) 1 All ER 21]. He proceeded to add: "There is one rule, I think which is clear that, although the absurdity or the non-absurdity of one conclusion as compared with another may be and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which must be applied with great care, remembering that judges may be fallible in this question of an absurdity and in

any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to re-write the language in a way different from that in which it was originally framed". [*Grundt v. Great Boulder Proprietary Gold Mines Ltd.* (supra)]. The alternative construction contended for must be such which does not put an undue strain on the words used; [*Kanailal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907] and does not require recasting of the Act or any part of it. It must be possible to spell the meaning contended for out of the words actually used. [*Shamrao V. Parulekar v. District Magistrate, Thana* AIR 1952 SC 324].

No doubt in cases of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the Legislature in forming its policy to consider these elements. [*IRC v. Mutual Investment Co.* (1966) 3 All ER 265]. If no alternative construction is open, the court cannot ignore a statutory provision "to relieve what it considers a distress resulting from its operation; a statute has to be given effect to whether the court likes it or not". [*Martin Burn Ltd. v. Calcutta Corporation*, AIR 1966 SC 524]. The function of the court is to find out what is legal and not what is right. [*Chandavarkar Sita Ratna Rao v. Ashalata S.Guram*, (1986) 4 SCC 447]. It is presumed that a legislative body intends which is the necessary effect of its enactments; the object, the purpose and the intention of the enactment is the same; it need not be expressed in any recital or preamble; and it is not competent for any court judicially to ascribe any part of the legal operation of the statute to inadvertence. [*Kariapper v. Wijesinha*, (1967) 3 All ER 485].

The Courts should as far as possible avoid a construction which results in anomalies. [*N.T.Veluswami Thevar v. G.Raja Nainar*, AIR 1959 SC 422].”

33. *Bennion* on ‘Statutory Interpretation’ has mentioned law to same effect under section 312 and has observed that there is a presumption that absurd result is not intended and in section 314 it has

been observed that the court has to avoid an inconvenient result while interpreting a provision. It was stated that it can be presumed that Parliament intends that while construing an enactment the court will avoid a construction that is unworkable or impracticable, inconvenient, anomalous or illogical as the same is unlikely to be intended by the Parliament. In *Rosali V. v. Taico Bank and Ors.* [2009 (17) SCC 690], this Court referring to Halsbury's Commonsense construction rule held that it is a well-settled principle of law that common sense construction rule should be taken recourse in certain cases.

34. This Court in *Sonic Surgical v. National Insurance Co. Ltd.* [2010 (1) SCC 135] has also laid down law to the same effect and has discussed the term 'branch office' used in section 17(2) of the Consumer Protection Act, 1986 in the context of cause of action. Section 17(2) of the said Act reads thus :

“17(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,--

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business



or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.]”

This Court while interpreting the provision held that the term ‘branch office’ as used in the amended section 17(2)(b) has to be interpreted to mean only that branch office where the cause of action has arisen. Thus, the court departed from the plain and literal meaning of the words of section 17(2)(b) of the Consumer Protection Act in order to avoid absurdity. The decision in *Somic Surgical* (supra) has been approved by this Court in *State of Madhya Pradesh and Anr. v. Narmada Bachao Andolan & Anr.* [2011 (7) SCC 639] inasmuch as this Court has observed that in case the natural meaning leads to mischievous consequences, it must be avoided by accepting other permissible construction.

35. Reliance has been placed by the appellants on the decision in *Union of India & Anr. v. Deoki Nandan Aggarwal* [1992 Supp. (1) SCC 323] so as to contend that the court cannot usurp the legislative intention and cannot supply omissions to a statute. There is no dispute

with the aforesaid proposition. However, we are simply interpreting the provisions considering the object of the Act.

36. Respondents have placed reliance on *Patel Roadways Ltd., Bombay v. Prasad Trading Co. etc.* [1991 (4) SCC 270] in which this Court has considered the provisions of section 20 of the CPC. This Court has observed thus :

“12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the Explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the Explanation. The Explanation is really an Explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is

not located there) *so long as there is a subordinate office of the corporation situated at such place*. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office <sup>278</sup>as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive “or” will not be there. Instead, the second part of the Explanation would have read “*and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place*”.

**13.** As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had

dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."

This Court has considered while interpreting the provision of section 20 CPC that no practical or undue difficulties or disadvantage either to the plaintiff or the defendant corporation could be caused. It has also been observed that it would be a great hardship if in spite of the corporation having a subordinate office at a place where the cause of action arises, such plaintiff is compelled to travel where the corporation has its principal office. That place should be convenient to the plaintiff and the corporation has an office at such place, will also be under no disadvantage.

37. Under clauses (a) to (c) of section 20 CPC, a plaintiff has a choice of forum and cannot be compelled to go to a place of business or residence of the defendant and can file a suit where the cause of action arises. The intendment of the Explanation has also been taken into consideration by this Court in *New Moga Transport Co.* (supra) thus :

“9. Normally, under clauses (a) to (c) the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia “carries on business”. Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises.

10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts: (i) before the word “or” appearing between the words “office in India” and the words “in respect of”, and (ii) the <sup>682</sup>other thereafter. The Explanation applies to a defendant which is a corporation, which term would include even a company. The first part of the Explanation applies only to such corporation which has its sole or principal office at a particular place. In that event, the court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression “at such place” appearing in the Explanation and the word “or” which is disjunctive clearly suggest that if the

case falls within the latter part of the Explanation it is not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone has the jurisdiction “in respect of any cause of action arising at any place where it has also a subordinate office”.

38. In *Exphar SA* (supra), this Court had considered the provisions contained in section 62 of the Copyright Act and has observed that the word ‘include’ shows that the jurisdiction for the purpose of section 62 is wider than that of the court as prescribed under the Code of Civil Procedure, 1908. This Court has laid down thus:

“12. We would like to emphasise the word "include". This shows that the jurisdiction for the purposes of Section 62 is wider than that of the Court as prescribed under the Code of Civil Procedure, 1908. The relevant extract of the report of the Joint Committee published in the Gazette of India dated 23-11-1956 which preceded and laid the foundation for Section 62(2) said :

"In the opinion of the Committee many authors are deterred from instituting infringement proceedings because the court in which such proceedings are to be instituted is situated at a considerable distance from the place of their ordinary residence. The Committee feels that this impediment should be removed and the new sub-clause (2) accordingly provides that infringement proceedings may be instituted in the District Court within the local limits of whose jurisdiction the person instituting the proceedings ordinarily resides, carries on business etc."

13. It is, therefore, clear that the object and reason for the introduction of sub-section (2) of Section 62 was not to

restrict the owners of the copyright to exercise their rights but to remove any impediment from their doing so. Section 62(2) cannot be read as limiting the jurisdiction of the District Court only to cases where the person instituting the suit or other proceeding, or where there are more than one such persons, any of them actually and voluntarily resides or carries on business or presently works for gain. It prescribes an additional ground for attracting the jurisdiction of a court over and above the “normal” grounds as laid down in Section 20 of the Code.”

This Court held therein that the Delhi court had jurisdiction since the plaintiff had averred that it has its registered office in Delhi and seize and desist notice was also received by the appellants at Delhi. The decision in *Exphar SA* (supra) does not oust the applicability of the provisions of section 20 of the Code of Civil Procedure as this Court has laid down that section 62 has prescribed an additional ground other than the normal ground prescribed in section 20 of the CPC. The question posed before us in the instant cases is different. In our considered opinion, the decision in *Exphar SA* (supra) buttresses the interpretation adopted by us.

39. Reliance has also been placed on decision in *Dhodha House* (supra) in which this Court considered the question about the maintainability of the composite suit for infringement of the Copyright Act, and the Trade and Merchandise Marks Act, 1958. The Trade Marks Act, 1999 was also considered. This Court has laid down

that composite suit may be maintainable under the Copyright Act and the Trade and Merchandise Act, 1958 but that may not be relevant for the purpose of determining the question of a forum where a suit can be instituted. In case the court is not having jurisdiction under one of the Acts, merely by combining the causes of action, the jurisdiction cannot be conferred upon the court. In that context, this Court has observed thus :

"20. The jurisdiction of the District Court to determine a lis under the 1957 Act as also the 1958 Act must, thus, be instituted where the whole or a part of cause of action arises. Sub-section (2) of Section 62 of the 1957 Act provides for an additional forum therefore in the following terms:

"(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

Admittedly, no such additional forum had been created in terms of the provisions of the 1958 Act.

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44. A cause of action in a given case both under the 1957 Act as also under the 1958 Act may be overlapping to some extent. The territorial jurisdiction conferred upon the court in terms of the provisions of the Code of civil Procedure indisputably shall apply to a suit or proceeding under the 1957 Act as also the 1958 Act. Sub-section (2) of



Section 62 of the 1957 Act provides for an additional forum. Such additional forum was provided so as to enable the author to file a suit who may not otherwise be in a position to file a suit at different places where his copyright was violated. The Parliament while enacting the Trade and Merchandise Marks Act in the year 1958 was aware of the provisions of the 1957 Act. It still did not choose to make a similar provision therein. Such an omission may be held to be a conscious action on the part of the Parliament. The intention of the Parliament in not providing for an additional forum in relation to the violation of the 1958 Act is, therefore, clear and explicit. The Parliament while enacting the Trade Marks Act, 1999 provided for such an additional forum by enacting sub-section (2) of Section 134 of the Trade Marks Act. The court shall not, it is well well-settled, readily presume the existence of jurisdiction of a court which was not conferred by the statute. For the purpose of attracting the jurisdiction of a court in terms of sub-section (2) of Section 62 of the 1957 Act, the conditions precedent specified therein must be fulfilled, the requisites wherefor are that the plaintiff must actually and voluntarily reside to carry on business or personally work for gain.

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47. A corporation in view of Explanation appended to Section 20 of the Code would be deemed to be carrying on business inter alia at a place where it has a subordinate office. Only because, its goods are being sold at a place would thus evidently not mean that it carries a business at that place.”

(emphasis supplied by us)

In *Dhodha House* (supra), the question which is posed before us did not come up for consideration and it has been observed that the Act provides for an additional forum. Such additional forum was provided so as to enable a plaintiff who may not be otherwise in a position to file a suit at different places where the copyright was

violated. We have anxiously considered the aforesaid observations made and the object of the Act, we find that the interpretation made by us does not militate against the observations made by this Court in *Dhodha House* (supra), the precise question which is before us, was not involved in the aforesaid case. A decision is not to be construed like a statute nor by inferential process it can be assumed that this Court has decided the question also which is before this Court in the instant cases.

40. This Court in *Paragon Rubber Industries & Ors. v. Pragathi Rubber Mills & Ors.* [2014 (57) PTC 1(SC)] held that a composite suit would not be maintainable unless the court had jurisdiction to entertain the suit in relation to both the Copyright Act and the Trade Marks Act. No such question is involved in the cases.

41. In *Dabur India Ltd.* (supra), the question was whether composite suit of infringement of copyright and passing off could be filed in a court having jurisdiction where the plaintiff actually and voluntarily resides or carries on business or personally works for gain as provided under section 62 of the Copyright Act. This Court answered the question in the negative, dismissed the appeal and held that Order 2 Rules 2 and 3 of the CPC can be exercised only in the event when the court has otherwise jurisdiction in respect of the cause

of action wherefor the action has been brought. This Court has observed with respect to section 62 of the Copyright Act thus :

“32. There cannot be any doubt whatsoever that the Parliament having inserted sub-section (2) in Section 62 of the 1957 Act, the jurisdiction of the court thereunder would be wider than the one under Section 20 of the Code. The object and reasons for enactment of sub-section (2) of Section 62 would also appear from the report of the Committee, as has been noticed by this Court being a provision which has been specially designed to confer an extra benefit upon the authors who were not in a position to instate copyright infringement proceeding before the courts. It is in the aforementioned context the law laid down by this Court in paragraph 13 of *Dhodha House* (supra) must be understood.

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34. What then would be meant by a composite suit? A composite suit would not entitle a court to entertain a suit in respect whereof it has no jurisdiction, territorial or otherwise. Order 2 Rule 3 of the Code specifically states so and, thus, there is no reason as to why the same should be ignored. A composite suit within the provisions of the 1957 Act as considered in *Dhodha House* (supra), therefore, would mean the suit which is founded on infringement of a copyright and wherein the incidental power of the court is required to be invoked. A plaintiff may seek a remedy which can otherwise be granted by the court. It was that aspect of the matter which had not been considered in *Dhodha House* (supra) but it never meant that two suits having different causes of action can be clubbed together as a composite suit.”

(emphasis supplied by us)

This Court in *Dabur India* (supra) with respect to the maintainability of a composite suit observed that a composite suit

would not entitle a court to entertain a suit in respect whereof it has no jurisdiction territorial or otherwise. The decision in *Dabur India* (supra) is of no help to the cause espoused by the appellants.

42. Now, we advert to various decisions of High Courts:

(a) The decision of the Delhi High Court in *Smithkline Beecham* (supra) has been relied upon. As the registered office was situated in Delhi, it was held that the plaintiffs were entitled to institute a suit in Delhi court and the questions of cause of action etc. did not come up for consideration.

(b) Delhi High Court in *Caterpillar Inc. v. Kailash Nichani* (supra) has observed that section 62 of the Copyright Act makes a significant and obvious departure from the norm that the choice of jurisdiction should primarily be governed by convenience of the defendants.

(c) In the decision in *Intas Pharmaceuticals Ltd.* (supra), Delhi High Court has considered the provisions of section 20 of the CPC and section 134 of the Trade Marks Act. The High Court has observed in para 17 of the report that the court has jurisdiction by virtue of the provisions contained in section 20(c) of the CPC as the defendant is selling the offending drug in Delhi.

(d) In *Ford Motor Co. & Anr. v. C.R. Borman & Anr.* [2008 (38) PTC 76 (Del.)], Delhi High Court considered that the plaintiff carried on the business in commercial quantities in Delhi and have authorised agents also. The pleadings of plaintiff have to be taken into consideration at the time of rejection of the plaint under Order VII Rule 11 CPC. It was observed on averments made that the Delhi High Court possessed territorial jurisdiction to entertain the suit as plaintiff carried on business at Delhi.

(e) In *Sap Aktiengesellschaft & Anr. v. M/s. Warehouse Infotech* [IA No. 11153/2009 in CS(OS) No.623/2009 decided on 19.11.2009], the question came up for consideration whether the plaintiff had a right to file a suit if he carries on business in the territorial jurisdiction of Delhi. The High Court held that in the plaint, jurisdiction was invoked on the ground that the defendants are voluntarily residing and carrying on business at Delhi. The plaintiff has branch office at Delhi and plaintiff's authorised partner was offering the products from its office at Delhi. The judgment was delivered considering the provisions of Order VII Rule 10, C.P.C. taking the plaint averments to be correct.

(f) In *Wipro Ltd. & Anr. v. Oushadha Chandrika Ayurvedic India (P) Ltd. & Ors.* [2008 (37) PTC 269 Mad.], the High Court at Madras

has observed that the provisions of section 20 CPC are not applicable as far as the High Court at Madras is concerned. Therefore, the scope of section 62 of the Copyright Act and section 134 of the Trade Marks Act, cannot be curtailed by reference to section 20 CPC or clause 12 of the Letters Patent.

(g) In *Hindustan Unilever Ltd. v. Ashique Chemicals & Ors.* [2011 (47) PTC 209 (Bom.)], the Bombay High Court has dealt with the territorial jurisdiction and held that section 134 of the Trade Marks Act conferred upon the plaintiff the benefit of bringing an action stipulated therein notwithstanding the provisions of the Code of Civil Procedure or any other law.

(h) In the case of *Ultra Tech Cement Ltd. & Anr. v. Shree Balaji Cement Industries & Ors.* [2014 (58) PTC 1 (Bom.)], the High Court held that it has the jurisdiction as the plaintiff carries on business within the jurisdiction of the court and plaintiff No.1 has registered office and plaintiff No.2 has corporate office within the jurisdiction of the said court, though the defendants did not carry on business nor do they have place of business within the jurisdiction of that court.

The facts of the instant cases and the question posed is different which did not come up for consideration in any of the

aforesaid decisions rendered by the High Courts and even otherwise any observations in any of aforesaid decisions contrary to our decision cannot hold the field. Interpretation of provisions cannot be so wide so as to open it to be misused, it has to be subject to object of the Act as explained above.

43. Coming to submission that vires of Section 62 has not been questioned. There is no doubt about it that the challenge to the vires of section 62 has not been made. However, the question is that of interpretation and not that of vires of the provisions which has been considered by us. There will be no violence to section 62 of Copyright Act and section 134 of Trade Marks Act by the interpretation adopted by us and the right of the plaintiff which has been conferred under the provisions, also remains intact. There is no question of giving disadvantage to the plaintiff *vis-a-vis* the defendant but both will stand to gain by proper interpretation.

44. We also find the submission to be futile that the law as to the otherwise on the basis of aforesaid decisions, has prevailed for a long time as such there should not be any interference. Firstly, the judgments are of recent origin. Even otherwise, we have considered each and every decision threadbare which has been referred to us. It cannot be said that the precise question involved in the cases before us

was involved in the aforesaid decisions or came up for consideration. In *Dhodha House* (supra) also, the question posed for consideration was different and the observations made therein are not supporting the cause raised on behalf of the appellants. We are not taking a view contrary to any of the said decisions of this Court. Thus, there is no need to refer the case to a larger Bench.

45. It was also submitted that as the bulk of litigation of such a nature is filed at Delhi and lawyers available at Delhi are having expertise in the matter, as such it would be convenient to the parties to contest the suit at Delhi. Such aspects are irrelevant for deciding the territorial jurisdiction. It is not the convenience of the lawyers or their expertise which makes out the territorial jurisdiction. Thus, the submission is unhesitatingly rejected.

46. It was also submitted that the suit may be ordered to be transferred to Delhi. We cannot order transfer of suit in these proceedings. In case parties so desire, they are free to file appropriate application but the suit is required to be presented in the court of competent jurisdiction only thereafter the question of transfer would be germane.



47. In our opinion, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business etc. at a place where cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above. Thus, for the aforesaid reasons mentioned by us in the judgment, we are not inclined to interfere with the orders passed by the High Court. Appeals are hereby dismissed. No costs.

.....J.  
(Jagdish Singh Khehar)

New Delhi;  
July 01, 2015.

.....J.  
(Arun Mishra)

SUPREME COURT OF INDIA



JUDGMENT